



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

In order that the lawyer who uses the volume may rely on its accuracy, it would seem desirable that the publishers should have a more thorough search made of the recent Pennsylvania decisions, and distribute the results in the form of a supplement.

Robert Dechert.

PROBLEMS OF LAW, ITS PAST, PRESENT, AND FUTURE. By John Henry Wigmore, Charles Scribner's Sons, 1920, pp. 136.

These lectures were delivered by Professor Wigmore at the University of Virginia on the Barbour-Page Foundation. One of the conditions of the Foundation is "that the lecturer present . . . some fresh aspect or aspects of the department of thought in which he is a specialist." And the lectures before us satisfy this requirement. In fact, it may be said that any discussion of the fundamentals in law present to an audience of lawyers or laymen in this country a fresh aspect of the subject. When the present writer read the following sentence from the second lecture of this book to a law student, "Why do we go to the legislator to ask for an abstract declaration of a desired rule of law, but to the judge for a concrete application of some existing rule to a dispute between specific persons?" (page 65), his characteristic answer was because the division of powers between the legislature and the judiciary is the basis of our government as provided in the Constitution. The further question whether such division is, to use terms made popular by the Greek Sophists, φύσει or νόμῳ, by nature or convention, essential for the complete success of each function or merely a matter of historical accident, which may have had its *raison d'être* when it displaced the previous arrangement, but has outlived its usefulness and the time is ripe for a new re-adjustment—this did not occur to him as a legitimate or profitable inquiry. The first and second lectures are precisely concerned with such inquiries as would probably seem to a practicing lawyer academic or so revolutionary as to be beyond the pale of practical interest.

This fresh aspect of the subject Prof. Wigmore presents in a fresh way. He is not satisfied with suggested solutions for a valid reason—because they are not true or are inadequately stated.

The main problem of the first lecture is that of the evolution of the law. And here Prof. Wigmore finds fault with all solutions presented hitherto for two main reasons. They are not true, because they ignore facts inconsistent with the theory. And secondly, assuming the formula of the law's evolution, as given, say, by Maine or De La Grasserie, to be correct, it is not enlightening as long as we do not know the causes which made this particular development necessary. To take an example, Maine formulates the development of the law in respect of forms of expression, as following the order, judgments, custom, legislation. Wigmore points out that this is true in some cases and not in others. This being so, the formula can not express a law of development inherent in the law itself or in human nature even in those cases where it holds true. And hence to be of any philosophic or scientific value it is necessary to point out the causes which made necessary the changes which actually took place. This, he realizes, is no easy task, for the causes determinative of the forms of legal institutions if compared with the forces determining the motions of a body in a planetary system, are infinitely more numerous and more complex than the

latter, and any geometrical symbol of social evolution, such as a straight line, a spiral, a circle, and so on, suggested by various thinkers, falls short of being a true approximation on account of its extreme simplicity.

This is a sound criticism, though the moral is not, and Prof. Wigmore does not intimate that it is, that such generalizations as those of Maine are useless. For on the one hand the philosophic impulse of restraining the unbridled variety and multiplicity of facts by confining them in a unitary formula is a human characteristic which can not be curbed, and it is foolish to postpone the exercise until the formula is sure to be adequate, for it never will be adequate. And in the second place, a theory or formula once stated is always an approximation to a truth, however partial, and forms the starting point for a closer and more comprehensive approximation subsequently. The wholesomeness of Prof. Wigmore's criticism is that it is a warning against accepting a familiar theory because it is familiar and brilliant and because it is inconvenient to have it upset.

The second lecture raises and discusses interestingly and in non-technical manner the question, no longer new, of the part of the judge in making law as opposed to finding it, and boldly pleads for more discretion on the part of the judge in the face of statute and precedent. An exception, Prof. Wigmore admits, must be made in those departments of law where stability is imperative, as in property and contract. But elsewhere the only justification for the present lack of freedom of the judiciary is the interest of the law's certainty, and this, Prof. Wigmore says, has notoriously not been secured. The law is as uncertain as it can possibly be. To be sure, if more freedom is to be given to the judge to ignore precedent we must be sure that this freedom will not be abused through wilfulness or incompetence, and Prof. Wigmore assures us that we have and shall have as good judges as we desire. This, however, will not settle the whole problem. Legislation is not all what it should be. A statute is bound to be general and abstract, whereas justice is necessarily concrete. This is in the nature of things and can not be remedied. But it is possible to legislate skillfully or in slipshod fashion. All depends upon the character and qualifications of the legislator. And Prof. Wigmore pleads for legislation by experts. "Make experts," he says, "of the legislators (1) by reducing their numbers, (2) by giving them longer terms, (3) by paying them enough to justify it as a career for men of talent, and (4) by making their sessions continuous."

The third lecture is devoted to a discussion of America's part in the world-legislation of the future. By reason of the ever-growing amount of international trade and commerce, the national differences in the private law cause much inconvenience, which may be obviated by making uniform those parts of the law dealing with international private relations. A good deal has already been accomplished in this direction. America is at a disadvantage by reason of the fact that the federal government can not bind the States, and has therefore so far been playing a minor role and could not actively participate. The uniformity that has been reached is to be put to the credit of the other nations, who naturally gave preference to their own systems of law, and America has to accept a foreign arrangement or stay out.

To create a more active participation on the part of the United States in the future, Prof. Wigmore advocates that the States make use of the power

they have "to share by individual action in world legislation, if they avail themselves of the Constitutional liberty under Art. I, Sec. 10, to make agreements or compacts with one or more foreign powers, with the consent of Congress."

Isaac Husik.

*Assistant Professor of Philosophy,
University of Pennsylvania.*

SHIPPERS AND CARRIERS OF INTERSTATE AND INTRASTATE FREIGHT. By Edgar Watkins. (Third Edition.) The Harrison Company, Atlanta, Ga., 1920. Two volumes, pp. 1778.

The tendency of the modern textbooks to become digests rather than the textbooks known to the older generation of lawyers has often been the subject of editorial comment. In this recent publication the same development appears in a different manner, the textbook becoming rather a series of annotated statutes than the result of original analysis of the subject. The many federal statutes involving shippers and carriers of freight are given in full, with brief notes of the chief decisions based upon them. The Conference Rulings of the I. C. C. are printed in a 225-page appendix to Volume I.

The best features of the book, aside from the practical value of having these statutes collected in two volumes, are the chapters dealing with state regulation of interstate commerce and with the principles of rate regulation, and also the discussion of the procedure of the Interstate Commerce Commission.

The work is not well rounded, however, and the scissors and paste-pot are all too apparent in the construction of the book. The lawyer or student looks in vain for any adequate presentation of the problems involved in Delivery to or Delivery by the carrier. Mechanically, the two volumes are far from perfect. Statutes and comments are printed in the same manner, neither being in quotation marks, so that it is sometimes not easy to determine which is Congress itself speaking, and which the Editor, giving his version of what Congress meant.

Robert Dechert.

OTHER BOOKS RECEIVED

THE FINANCIAL ORGANIZATION OF SOCIETY. By Harold G. Moulton, Associate Professor of Political Economy, University of Chicago. Univ. of Chicago Press, 1921, pp. xxiii+789.

THE CASE OF REQUISITION. (*In re* a Petition of Right of De Keyser's Royal Hotel Limited.) By Leslie Scott and Alfred Hildesley. Oxford University Press, 1920, pp. 307.

REPORT OF THE 43RD ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION, 1920. The Lord Baltimore Press, Baltimore, Md., pp. 837.